

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5744

PETITION OF FRANK E. NICOL

(Hearing held May 1, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, May 23, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-9.45. The petitioner proposes to construct an accessory structure (detached garage) in the front yard. Section 59-C-9.45 requires accessory structures to be located in the rear yard only.

The subject property is Lot 13, Block A, Ednor Highlands Subdivision, located at 1000 Tucker Lane, Ashton, Maryland, in the RC Zone (Tax Account No. 16002174384).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct an approximately 33.2 x 25 foot detached garage in the front yard. See, Exhibit No. 5(b).
2. The petitioner testified that the topography in the rear yard is approximately 8-10 feet lower than the area where the residence is located and that the property's existing septic system prevents construction in the rear yard.
3. The petitioner testified that his property is heavily wooded and that the garage would be screened by the existing trees. The petitioner testified that the property is a 5-acre lot. The petitioner testified that the architectural design of the garage would match the residence and that the garage was designed to accommodate a Winnebago.
4. In response to questions from the Board, the petitioner stated that a garage added to the residence would require the regrading of the area around the residence.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) and (b) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's property has no exceptional topographical or other conditions peculiar to the property. The Board notes that that petitioner's property is consistent in size with the lots in the neighborhood and that the property's existing conditions do not prevent the siting of a garage elsewhere on the lot.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions

The Board finds that the garage, as proposed, is not the minimum reasonably necessary.

The petition does not meet the requirements of Section 59-G-1.3(a) and (b). The Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure (detached garage) in the front yard is denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 23rd day of May, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County

Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.